IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GEORGE FREEMAN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 96 C 6265**
	)	
SALVADOR GODINEZ, JAMES SCHOMIG, JOSEPH CURRY, LUTHER MANNING, JOHN THOMAS, WILLIAM SHEGA, and JOHN DOE,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELLY, District Judge:

Defendants have moved for reconsideration of the Court's order of February 15, 2001 reinstating the case and granting plaintiff's motion to enforce settlement. For the reasons stated below, the motion is denied.

Defendants contend there was no basis for the Court to retain jurisdiction or to grant relief from what they characterize as a "final judgment" entered on August 31, 2000. In fact the order of August 31 – which dismissed the case based on the parties' report that they had settled, with leave to reinstate if the settlement was not concluded – was neither a judgment nor a final order. *See, e.g., JTC Petroleum Co. v. Piasa Motor Fuels, Inc.*, 190 F.3d 775 (7th Cir. 1999). In the situation that existed here, a dismissal with leave to reinstate is essentially a means of docket control, which removes the case from the Court's active call while retaining the ability to reactivate it if one side or another

reneges on the settlement (which is what ended up happening in this case). Plaintiff thus did not have to obtain relief from a "judgment" under Rule 60(b); rather he had only to seek to reinstate the case, which is exactly what he did.

The Court rejects defendants' argument that "the parties were all aware that settlement was and is contingent on a written settlement agreement." Dfdt. Mot. at 2. There was no such contingency in the offer made by defendants that plaintiff accepted.[1] Defendants have attached to their motion correspondence that they failed to offer in response to plaintiffs' motion to enforce the settlement. This submission is untimely; the purpose of a motion to reconsider is not to correct omissions in the party's previous submission, but rather to correct manifest errors of law or fact or to present newly discovered evidence. *See generally Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990). In any event, the materials that defendants have now provided change nothing: the fact that the parties worked on a written agreement after agreeing on a settlement does not mean that concluding a written agreement was a condition of their deal. Finally, the fact that the Court's August 31, 2000 order referred to "settlement documentation," *see* Dfdt. Mot. at 4, did not make completion of a written agreement a condition of the parties' deal. Defendants imposed no such condition in their written offer that plaintiff accepted; nothing the Court said can change that fact.[2]

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[1] The Court likewise rejects defendants' argument, made in open court on March 9, that the settlement was contingent on providing of a release. Again, there was no such contingency in the offer made by defendants that plaintiff accepted. The fact that they discussed (but did not come to terms on) a release after that does not mean that it was a condition of the deal to begin with.

[2] Contrary to defendants' suggestion, *see* Dfdt. Mot. at 4, there was unquestionably adequate consideration for the settlement – specifically dismissal of plaintiff's claims in this action.

Defendants contend that "the parties agreed to enforce settlement in State court only." Dfdt. Mot. at 3. This argument was entirely lacking from defendants' submission in response to plaintiff's motion to enforce the settlement and thus cannot properly be made on a motion to reconsider. In any event, defendants' contention flies in the face of the record; no such agreement is evidenced anywhere.

We adhere to our prior ruling rejecting defendants' argument that qualified immunity bars enforcement of the settlement, as well as our reliance on *Williams v. Lane*, 818 F.Supp. 1212, 1213 (N.D. Ill. 1993), as support for our rejection of defendants' argument. The fact that there was a written agreement *Williams*, *see* Dfdt. Mot. at 7, does not render it inapposite; the existence of a written agreement had nothing to do with the legal principle for which this Court relied on the case.

The Court rejects defendants' argument, *see* Dfdt. Mot. at 2, 5, that we should have held an evidentiary hearing regarding the existence and terms of the agreement. *Wilson v. Wilson*, 46 F.3d 660 (7th Cir. 1995), makes clear that a hearing is required "where the material facts concerning the existence or terms of an agreement to settle are in dispute." *Id.* at 664. Here they were not. The existence and terms of the parties' agreement were clearly and unequivocally established by the correspondence that the parties submitted to the Court. Nothing in the papers that were provided to the Court on the motion to enforce the settlement suggested that there were any disputed issues of material fact such that a hearing was necessary; indeed defendants never indicated that they felt a hearing was necessary.

Finally, defendants argue that plaintiff "failed to provide credible evidence that the defendants repudiated an agreement." Dfdt. Mot. at 7. The Court disagrees. After reaching an agreement to settle this case, defendants attempted to extract an additional term that had not been part of the

agreement – dismissal of plaintiffs' other lawsuits pending in other districts. When plaintiff would not agree, defendants declined to proceed with the settlement and claimed there had never been a settlement to begin with. If that is not a repudiation, the Court does not know what is.

For these reasons, the Court denies defendants' motion to reconsider. The terms of the settlement are those which the Court found in its February 15, 2001 order. Based on the settlement, the case is again dismissed with prejudice, with the Court retaining jurisdiction to enforce the terms of the settlement as set forth in the Court's February 15, 2001 order. The Clerk is directed to enter judgment accordingly.

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MATTHEW F. KENNELLY
United States District Judge

Date: March 9, 2001